

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DWAYNE ALMOND,

Plaintiff,

v.

Case No. 08-C-546

STATE OF WISCONSIN, et al.,

Defendants.

ORDER

Plaintiff has filed a complaint under 42 U.S.C. § 1983 and wishes to proceed *in forma pauperis*. Plaintiff is a prisoner on this court’s “three strikes” list. *See* 28 U.S.C. § 1915(g). That means he must pay the entire \$350 filing fee up-front unless he alleges he is in imminent danger of serious physical injury. *Id.* The complaint purports to show imminent physical injury, but in reality it is based on a commonplace assertion of deliberate indifference. In short, the plaintiff fell and alleges he has not received appropriate medical care. He asserts his neck and lower back are in pain because of the fall and that he has not received treatment.

In determining whether a complaint alleges imminent danger of serious physical injury, a court considers both the temporal aspects of the claim (is it based solely on the past, or is it ongoing) as well as its seriousness. The Seventh Circuit has cautioned that district courts should not play doctor, but must evaluate inmate complaints based on common sense and the plausible allegations set forth therein. *Ciarpaglini v. Saini*, 352 F.3d 328, 331 (7th Cir. 2003). Here, plaintiff alleges the back pain is ongoing, but there is no allegation that back or neck pain constitutes “serious physical

injury.” It is not as though the defendants are alleged to be withholding prescription medications or subjecting the plaintiff to dangerous conditions. Moreover, the complaint says the plaintiff saw a nurse, who administered 7 days of a “hot / cold bag.” Evidently the HSU staff did not believe plaintiff’s condition merited escalation to the prison doctor. But that is simply a disagreement with medical staff about the proper course of treatment – the complaint barely alleges deliberate indifference, much less an imminently serious threat of severe injury. In sum, there is nothing either “imminent” nor “serious” about the allegations contained in the complaint. Accordingly, the motion for leave to proceed *in forma pauperis* is **DENIED**. The full filing fee is due within 21 days or the complaint will be dismissed.

SO ORDERED this 1st day of July, 2008.

s/ William C. Griesbach
William C. Griesbach
United States District Judge